

² The Board notes that, following the February 24, 2021 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal.

FACTUAL HISTORY

On January 13, 2021 appellant, then a 35-year-old painter, filed a traumatic injury claim (Form CA-1) alleging that on October 23, 2019 he sustained an injury to his hip and groin area while in the performance of duty.³ He did not stop work.

In an October 29, 2019 incident report, appellant indicated that on October 23, 2019 he had to lift and carry a five-gallon paint container. He explained that he was not aware of the container's weight and, although he lifted it properly, he injured his right hip and thigh area while he was walking. In a medical referral form of even date, appellant's supervisor, referred him for medical attention, noting that he felt a pop and pain in his hip and groin area after moving a can of paint weighing approximately 50 pounds.

By decision dated February 24, 2021, OWCP accepted appellant's traumatic injury claim for a strain of muscle, fascia and tendon of right hip. By separate decision of even date, it denied his claim for COP, finding that he had not reported his injury on an OWCP-approved form within 30 days of the accepted October 23, 2019 employment injury. OWCP noted that the denial of COP did not preclude appellant from filing a claim for disability due to the effects of the accepted employment injury.

LEGAL PRECEDENT

Section 8118(a) of FECA authorizes COP, not to exceed 45 days, to an employee who has filed a claim for a period of wage loss due to a traumatic injury with his or her immediate superior on a form approved by the Secretary of Labor within the time specified in section 8122(a)(2) of this title.⁴ This latter section provides that written notice of injury shall be given within 30 days.⁵ The context of section 8122 makes clear that this means within 30 days of the injury.⁶

OWCP's regulations provide, in pertinent part, that to be eligible for COP, an employee must: (1) have a traumatic injury which is job related and the cause of the disability and/or the cause of lost time due to the need for medical examination and treatment; (2) file Form CA-1 within 30 days of the date of the injury; and (3) begin losing time from work due to the traumatic injury within 45 days of the injury.⁷

The employee must provide a written report on a Form CA-1 to the employing establishment within 30 days of the injury.⁸ OWCP's procedures provide that another OWCP-

³ Appellant did not provide a description as to what caused his injury.

⁴ *Supra* note 1 at § 8118(a).

⁵ *Id.* at § 8122(a)(2).

⁶ *E.M.*, Docket No. 20-0837 (issued January 27, 2021); *J.S.*, Docket No. 18-1086 (issued January 17, 2019); *Robert M. Kimzey*, 40 ECAB 762, 763-64 (1989); *Myra Lenburg*, 36 ECAB 487, 489 (1985).

⁷ 20 C.F.R. § 10.205(a)(1-3); *see also J.M.*, Docket No. 09-1563 (issued February 26, 2010).

⁸ *Id.* at § 10.210(a).

approved form, such as CA-2, CA-2a, or CA-7 forms, which contain words of claim, can be used to satisfy timely filing requirements.⁹

The Board has held that section 8122(d)(3) of FECA,¹⁰ which allows OWCP to excuse failure to comply with the time limitation provision for filing a claim for compensation because of exceptional circumstances, is not applicable to section 8118(a), which sets forth the filing requirements for continuation of pay. Thus, there is no provision in the law for excusing an employee's failure to file a claim within 30 days of the employment injury.¹¹

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish entitlement to COP.

Appellant filed written notice of an October 23, 2019 traumatic injury on January 13, 2021. The Board notes that there is no provision in FECA for excusing a late filing regarding COP.¹² As appellant's traumatic injury claim was filed more than 30 days after his alleged October 23, 2019 employment injury, as specified in sections 8118(a) and 8122(a)(2) of FECA, the Board finds that OWCP properly denied COP.¹³

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish entitlement to COP.

⁹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Continuation of Pay and Initial Payments*, Chapter 2.807.5 (June 2012).

¹⁰ 5 U.S.C. § 8122(d)(3).

¹¹ *Dodge Osborne*, 44 ECAB 849, 855 (1993).

¹² *T.A.*, Docket No. 21-0441 (issued May 3, 2021).

¹³ 20 C.F.R. § 10.210(a); *J.S.*, Docket No. 18-1086 (issued January 17, 2019).

ORDER

IT IS HEREBY ORDERED THAT the February 24, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 13, 2022
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board